

United States
Circuit Court of Appeals

For the Ninth Circuit.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Alaska, Division No. 1.

Filed

JAN 31 1916

F. D. Manchester,
Clerk

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Affidavit of P. R. M. Bradley.....	12
Affidavit of Governor Strong of Alaska.....	11
Assignment of Errors.....	25
Attorneys, Names and Addresses of.....	1
Bill of Exceptions.....	1
Bond on Writ of Error.....	30
Certificate of Clerk U. S. District Court to Trans- cript of Record.....	35
Citation on Writ of Error.....	33
Exceptions, Bill of.....	1
Judgment.....	21
Names and Addresses of Attorneys.....	1
Order Settling and Allowing Bill of Exceptions, etc.	20
Petition for Writ of Error and Allowance Thereof.....	23
Praecept for Transcript of Record.....	34
Stipulation of Facts.....	2
Writ of Error.....	28

[Names and Addresses of Attorneys.]

Messrs. HELLENTHAL & HELLENTHAL, Juneau, Alaska,

Attorneys for Plaintiff in Error.

J. H. COBB, Esquire, Juneau Alaska,

Attorney for Defendant in Error. [1*]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Case No. 1408—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COMPANY, a Corporation,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that the parties hereto desiring to submit to the Court, under the provisions of chapter 28, Alaska Code of Civil Procedure, a controversy existing between them, entered into and filed with the Court, in the proper office an agreed case and stipulation of facts, which is in words and figures as follows, to wit:

*Page-number appearing at foot of page of original certified Record.

[**Stipulation of Facts.**]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Case No. 1408-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Defendant.

AGREED CASE.

Whereas a controversy exists between the Territory of Alaska and the Alaska Mexican Gold Mining Company, which might be the subject of an action, and whereas it is desired to submit such controversy for the decision of the court, under the provisions of chapter 28, Alaska Code of Civil Procedure,

NOW, THEREFORE, it is hereby stipulated and agreed:

I.

That the Alaska Mexican Gold Mining Company is a corporation duly incorporated under and by virtue of the laws of the State of Minnesota and doing business in the Territory of Alaska under and by virtue of the laws thereof; that it has paid its annual license taxes required of it [1a] for doing business as a corporation, under and by virtue of the provisions of chapter 11 of the Session Laws of 1913, and is in all respects duly qualified

to hold property, carry on business and maintain actions in the courts of the Territory of Alaska.

II.

That the Alaska Mexican Gold Mining Company is the owner of several mining claims situate on Douglas Island, Territory of Alaska; that these claims contain gold mines; that during the years 1913 and 1914, it was engaged in operating said gold mines;

That the net income resulting from the mining operations so carried on by the Alaska Mexican Gold Mining Company between July 31, 1913, and January 1, 1914, amounted to fifty-seven thousand five hundred seventy-two and 43/100 (\$59,655.77) dollars, and that the net income resulting from the mining operations so carried on by the Alaska Mexican Gold Mining Company for the calendar year of 1914 was one hundred fourteen thousand nine hundred fifty-three and 49/100 (\$119,953.49) dollars.

III.

The Alaska Mexican Gold Mining Company has complied fully during said year with all the provisions of the act of Congress providing for taxes on business and trade, paying thereunder a tax of three (\$3.00) dollars per annum on each of its one hundred and twenty (120) stamps.

IV.

The first session of the Alaska legislature passed a revenue bill which went into effect July 31, 1913, and is found printed in the Alaska Session Laws 1913, as chapter 52, which is here referred to and made a

part hereof the same as if written herein.

That the clerk of the District Court never filed a bond as required by the provisions of the act above referred to.

V.

The Alaska Mexican Gold Mining Company did not apply for a license under the act last mentioned, during or for either of the years 1913 or 1914, and did not receive a license under the provisions of said act or otherwise for or during either of said years to carry on the business of mining, or any other license whatsoever, and did not pay to the Territory of Alaska for a license or otherwise the sum of one half of one per cent, or any other sum whatsoever under or in compliance with the provisions of the act last above referred to. [2]

VI.

That the Alaska legislature at its second session passed an act which is printed in the Session Laws of Alaska, 1915, as chapter 76, and is here referred to for all the particulars thereof and made a part hereof the same as if herein written.

The manner of the passage of said act by the legislature is set out in detail in paragraph eight herein, and the statement in this paragraph contained "that the Alaska legislature passed said act" is not to be construed as an admission that said act was legally passed, but the question of whether said act was or was not legally passed is to be determined from the facts as set forth in detail in paragraph eight.

VII.

That the Territory of Alaska has demanded of the

Alaska Mexican Gold Mining Company the payment of \$287.86 with legal interest thereon from January 15, 1914, claimed to be due it as taxes for the year 1913, and has also demanded of the Alaska Mexican Gold Mining Company the sum of \$574.76 with legal interest thereon from January 15, 1915, claimed to be due it as taxes for the year 1914.

VIII.

The second session of the legislature which passed chapter 76, Session Laws of Alaska, 1915, convened on the 1st day of March, 1915, at 12 o'clock noon; that on the 29th day of April, 1915, said legislature adjourned, *sine die*, at 12 o'clock midnight, according to the official time-pieces of said legislature, that is to say, the clocks hanging in the halls of the two houses of the legislature were stopped or turned back by the sergeant-at-arms just prior to the hour of 12 o'clock midnight of April 29th, 1915, and thereafter between the hours of 3 and 4 o'clock A. /. sun time, of April 30, 1915, while the clocks in said halls of the legislature still indicated prior to midnight, being stopped or turned back as aforesaid, the said act, namely, chapter 76 of the Session Laws of Alaska, 1915, was finally passed by both houses of the legislature and approved by the governor and was enrolled and filed in the office of the Secretary of State for the Territory as it now appears in the printed volume of Session laws of Alaska, 1915, chapter 76; that the Governor of the Territory of Alaska did not call an extra session to pass said act.

PRINCIPAL CONTENTION OF PARTIES.

It is contended on the part of the Territory of

Alaska that the defendant, the Alaska Mexican Gold Mining Company is indebted to it in the sum of \$287.86 with interest thereon from January 15, 1914, and the sum of \$574.76 with interest thereon from January 15, 1915, as unpaid taxes claimed to be due under and in accordance with the acts of the territorial legislature above referred to. [3]

I.

It is claimed on the part of the Alaska Mexican Gold Mining Company that it is not indebted to the Territory of Alaska, the plaintiff herein, in any sum whatsoever, as taxes or otherwise, and in this connection the Alaska Mexican Gold Mining Company contends:

That under the provisions of chapter 52 of the acts of the Territorial legislature for the year 1913, being entitled "An Act to establish a system of taxation, create revenue and provide for collection thereof for the Territory of Alaska and for other purposes," being the act first above referred to, no civil liability is created and the Alaska Mexican Gold Mining Company is not made, by the provisions of that act, civilly liable to the Territory of Alaska for the payment of any sum whatsoever, nor does that act contain any provision under which the said Alaska Mexican Gold Mining Company could or did become indebted to the Territory of Alaska in any sum whatsoever;

That said act merely makes it an offense to prosecute or attempt to prosecute any of the lines of business therein mentioned, including mining, without first applying for and obtaining a license so to do, making said offense a misdemeanor punishable as

provided in the act, without providing that those prosecuting or attempting to prosecute any of the lines of business for which such license is required shall be indebted to the Territory in any sum whatsoever;

And that the provisions of chapter 76 of the acts of the Territorial legislature for the year 1915, hereinbefore referred to, if construed to impose a liability, are retroactive and void as being obnoxious to the provisions of the Constitution of the United States.

II.

That chapter 52 of the acts of the Territorial legislature of 1913 is void, as far as the matters and things herein, referred to are concerned, for the reason, among others, that it was impossible for the Alaska Mexican Gold Mining Company to comply with the provisions of said act and apply for or obtain a license, as therein provided, in that said act required the said company to apply for and procure a license in advance and pay therefor one half of one per cent on its net income which had not yet been earned and which it was impossible to calculate or determine in advance.

In this connection it is urged that said provisions of chapter 52, in so far as they relate to this case are void because upon a conviction for a violation thereof the Court would be powerless to impose a sentence since the amount fixed as a penalty is so indefinite and uncertain that no sentence could be imposed by the Court; that the clerk of the court [4] could not act as an officer for the Territory in

receiving the license fee or issuing the license and that the Judge could not act as a territorial officer in passing upon the license.

III.

That said act, chapter 52 of the acts of the Territorial legislature of 1913, above referred to, is void, especially in so far as it relates to the facts in this case, for the reason that it compels those engaged in mining to make an application to the District Court or Judge thereof for a license to carry on such mining operations or business and reposes in said court or Judge thereof the arbitrary power of granting or refusing such license, giving said Court or Judge thereof the power to arbitrarily or capriciously deny an owner of mining claims a license to work or operate his said claims so that the Court or Judge would have the power in this case of denying the Alaska Mexican Gold Mining Company a license to operate or mine its mining claims and in so doing deprive the said company of its said property and also denying the said company the right to follow the useful and lawful occupation of mining, all of which is contrary to the provisions of the Constitution of the United States in that regard.

IV.

That said chapter 52 of the Session Laws of the Alaska legislature for the year 1913 is void, especially in so far as it relates to the facts in this case for the further reason that under the provisions of said act a license is required not for the purpose of regulation under the police power, but for the purpose of raising revenue under the taxing power and

for the last-mentioned purpose alone;

That under the Organic Act of the Territory of Alaska providing for a legislature and conferring thereon the powers therein mentioned, the said legislature has no authority to require a license for the purpose of taxation or for the purpose of raising revenue, and that the power of said legislature in the collection of taxes is limited by the following provision, "All taxes shall be uniform upon the same class of subjects and shall be levied and collected under General Laws, and the assessments shall be according to the actual value thereof," as well as by other provisions contained in the Organic Act; that under the provisions and limitations contained in said Organic Act, the Territorial legislature has no power or authority to impose a license tax or require the payment of a license fee for the purpose of raising revenue;

That the license tax sought to be imposed by the said act is levied without any assessment whatsoever and without any regard to the value of the subject or thing sought to be taxed, contrary to the provisions of the Organic Act in that regard. [5]

V.

That said chapter 52 of the Session Laws of the Territorial legislature for the year 1913, is void, especially in so far as it relates to the facts in this case, because it attempts to impose a tax not uniform upon the same class of subjects in this that one-half of one per cent is required on the net income in payment for the license to mine, except that those engaged in said business and having a net income less

than five thousand per annum, are not required to pay any sum whatsoever in payment of the license provided for, which said provision is in violation of the provision of the Organic Act that all taxes must be uniform upon the same class of subjects and is obnoxious to the provisions of the constitution of the United States in that behalf.

It is agreed and understood by and between the parties that while the contentions of the parties are herein set out in the main, either party shall be at liberty to urge any matter of law whatsoever in addition to the matters herein expressly contended for and that nothing herein contained shall be so construed as to limit either party in that regard, and in this connection it is expressly agreed that the Alaska Mexican Gold Mining Company does and shall have the right to urge the point that no civil remedy is provided by law for the collection of the sum for which judgment is sought or any part thereof, and further that the submission of the controversy in this manner, upon an agreed statement of facts, shall not be construed as an admission on the part of the Alaska Mexican Gold Mining Company that it is in any sense liable to the Territory of Alaska in any sum whatsoever, or that any cause of action exists against it in favor of the Territory of Alaska.

Upon the above and foregoing facts the Court is asked to render judgment, as it may find the law and the rights of the parties to be; and either party shall have the right to appeal on writ of error, sued out as an ordinary action upon the pleadings. And in consideration of the saving of expense and delay

by trying the controversy under this stipulation, the Territory waives all claims for penalties, and asks only a judgment for the amount of the taxes and legal interest thereon.

J. H. COBB,
Chief Counsel for the Territory of Alaska.
HELLENTHAL & HELLENTHAL,
Attorneys for Defendant.

[Affidavit of Governor Strong of Alaska.]

United States of America,
Territory of Alaska,—ss.

J. F. A. Strong, being first duly sworn, on oath deposes and says: That he is the Governor of the Territory of Alaska; that he has read the foregoing agreed case and statement of facts and knows the contents thereof and that [6] the controversy to which the same relates is a real controversy existing between the Territory of Alaska, on the one hand, and the Alaska Mexican Gold Mining Company on the other, and that this proceeding, or submission of this cause to the Court upon the statement of facts above referred to is taken in good faith to determine the rights of the parties.

J. F. A. STRONG.

Subscribed and sworn to before me this 9th day of December, 1915.

[Seal]

E. L. COBB,
Notary Public for Alaska.

My commission expires Dec. 3d, 1918.

[Affidavit of P. R. Bradley.]

United States of America,
Territory of Alaska,—ss.

P. R. Bradley, being first duly sworn on oath deposes and says: That he is the general superintendent as well as the agent and attorney in fact for the Alaska Mexican Gold Mining Company, the defendant above named; that he has read the foregoing agreed case and statement of facts and knows the contents thereof; and that the controversy existing between the plaintiff and defendant, that is to say, the Territory of Alaska and the Alaska Mexican Gold Mining Company, to which the above statement of facts relates, is a real controversy and that this proceeding, to wit, the submission of said controversy to the Court upon this agreed statement of facts is taken in good faith to determine the rights of the parties, and affiant further says that he is the person designated by the Alaska Mexican Gold Mining Company and appointed by said company as the agent upon whom service of process may be made, by an instrument in writing duly filed in the office of the Secretary of the Territory, under and pursuant to the laws relating to foreign corporations, and that he has duly accepted said appointment as by law required, and is in all respects fully authorized to make this verification.

P. R. BRADLEY.

Subscribed and sworn to before me this 8th day of December, 1915.

[Seal]

SIMON HELLENTHAL,

Notary Public for Alaska.

My commission expires Nov. 30, 1917.

Filed in the District Court, District of Alaska,
First Division. Dec. 9, 1915. J. W. Bell, Clerk.

[7]

Whereupon said controversy and cause of action so existing between the Territory of Alaska, as plaintiff, and the Alaska Mexican Gold Mining Company, a corporation, as defendant, was by the parties submitted to the Court for its decision upon the agreed case and stipulation of facts aforesaid, and the plaintiff then and there requested the Court to enter judgment in its favor in the sum of \$862.61 and the defendant then and there requested the Court to conclude that it was not indebted to the plaintiff in the sum demanded or any other sum whatsoever, and accordingly to enter judgment in favor of the defendant. This request of the defendant was then and there denied by the Court, to which ruling and order of the Court the defendant then and there excepted on the following grounds:

I.

That under the provisions of chapter 52 of the acts of the Territorial legislature for the year 1913, being entitled "An Act to establish a system of taxation, create revenue and provide for collection thereof for the Territory of Alaska and for other purposes," being the act first above referred to, no civil liability is created and the Alaska Mexican Gold

Mining Company is not made, by the provisions of that act, civilly liable to the Territory of Alaska for the payment of any sum whatsoever, nor does that act contain any provision under which the said Alaska Mexican Gold Mining Company could or did become indebted to the Territory of Alaska in any sum whatsoever; [8]

That said act merely makes it an offense to prosecute or attempt to prosecute any of the lines of business therein mentioned, including mining, without first applying for and obtaining a license so to do, making said offense a misdemeanor punishable as provided in the act, without providing that those prosecuting or attempting to prosecute any of the lines of business for which such license is required shall be indebted to the Territory in any sum whatsoever;

And that the provisions of chapter 76 of the acts of the Territorial legislature for the year 1915, hereinbefore referred to, if construed to impose a liability, are retroactive and void as being obnoxious to the provisions of the Constitution of the United States.

II.

That chapter 52 of the acts of the Territorial legislature of 1913 is void, as far as the matters and things herein referred to are concerned, for the reason, among others, that it was impossible for the Alaska Mexican Gold Mining Company to comply with the provisions of said act and apply for or obtain a license, as therein provided, in that said act required the said company to apply for and procure

a license in advance and pay therefor one half of one per cent on its net income which had not yet been earned, and which it was impossible to calculate or determine in advance.

In this connection it is urged that said provisions of chapter 52, in so far as they relate to this case are void because upon a conviction for a violation thereof the Court would be powerless to impose a sentence since the amount fixed as a penalty is so indefinite and uncertain that no sentence [9] could be imposed by the Court; that the clerk of the court could not act as an officer for the Territory in receiving the license fee or issuing the license and that the Judge could not act as a territorial officer in passing upon the license.

III.

That said act chapter 52 of the acts of the Territorial legislature of 1913, above referred to, is void especially in so far as it relates to the facts in this case for the reason that it compels those engaged in mining to make an application to the District Court or Judge thereof for a license to carry on such mining operations or business and reposes in said Court or Judge thereof the arbitrary power or granting or refusing such license, giving said Court or Judge the power to arbitrarily or capriciously deny an owner of mining claims a license to work or operate his said claims so that the Court or Judge would have the power in this case of denying the Alaska Mexican Gold Mining Company a license to operate or mine its mining claims and in so doing deprive the said company of its said property and

also denying the said company the right to follow the useful and lawful occupation of mining, all of which is contrary to the provisions of the Constitution of the United States in that regard.

IV.

That said chapter 52 of the Session Laws of the Alaska legislature for the year 1913, is void especially in so far as it relates to the facts in this case for the further reason that under the provisions of said act a license is required not for the purpose of regulation under the police [10] power, but for the purpose of raising revenue under the taxing power and for the last-mentioned purpose alone;

That under the Organic Act of the Territory of Alaska providing for a legislature and conferring thereon the powers therein mentioned, the said legislature has no authority to require a license for the purpose of taxation or for the purpose of raising revenue, and that the power of said legislature in the collection of taxes is limited by the following provision, "All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof," as well as by other provisions contained in the Organic Act; that under the provisions and limitations contained in said Organic Act, the territorial legislature has no power or authority to impose a license tax or require the payment of a license fee for the purpose of raising revenue;

That the license tax sought to be imposed by the said act is levied without any assessment whatso-

ever and without any regard to the value of the subject or thing sought to be taxed, contrary to the provisions of the Organic Act in that regard.

V.

That said chapter 52 of the Session Laws of the territorial legislature for the year 1913, is void, especially in so far as it relates to the facts in this case, because it attempts to impose a tax not uniform upon the same class of subjects in this that one half of one per cent is required on the net income in payment for the license to mine, except [11] that those engaged in said business and having a net income less than five thousand per annum, are not required to pay any sum whatsoever in payment of the license provided for, which said provision is in violation of the provision of the Organic Act that all taxes must be uniform upon the same class of subjects and is obnoxious to the provisions of the Constitution of the United States in that behalf.

Which exception was then and there allowed by the Court.

The defendant duly and regularly and at the time the Court so concluded, objected and excepted to conclusion number one, contained in the judgment which is in words and figures as follows:

“That the defendant is liable for the license tax laid by the Territory of Alaska in chapter 52 of the Session Laws of 1913.”

which objection and exception is based on the ground that chapter 52 of the Session Laws of 1913, especially in so far as the provisions thereof relate

to the facts contained in the agreed statement of facts herein, is invalid and void because the same is so uncertain that it cannot be enforced, because the provisions thereof are such that it is impossible to comply therewith, because the act confers upon the Court or Judge arbitrary power to deprive the defendant of property and of the right to follow the occupation of mining, in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States and that the act is void as being in conflict with the provisions of the Federal Constitution, for the various reasons set out in detail in the stipulation of facts herein, and further, that the act is void and invalid as being passed by the [12] legislature without authority and as being in violation of the provisions of the Organic Act of the Territory, because under the provisions of said act said legislature had no power to levy, lay or collect a tax other than a tax based upon value and upon an assessment of the property taxed, and further that the tax in question violates the provisions of the Organic Act in that it is not uniform upon the same class of subjects, incomes of five thousand dollars being exempt. And that said act is in violation of said Organic Act for the various reasons set out in detail in the agreed statement of facts herein, all of which said reasons set out in said statement of facts, both in regard to the conflict between the Organic Act and the act of the legislature under discussion, chapter 52 of the Laws of 1913, and as to the conflict between said act and the provisions of the Constitution of the United States, are to be re-

garded as if repeated and incorporated in this exception. And this exception is based upon the further ground that no civil liability exists under the provisions of chapter 52 of the Session Laws of 1913, which exception was then and there allowed by the Court.

The defendant, then and there and at the time, further objected and excepted to conclusion of law number two, as the same was embodied in the judgment, which reads as follows:

That the tax so due may be recovered in a civil action under the provisions of chapter 76 Session Laws of Alaska, 1915.

This conclusion was objected to and excepted to on the ground, among others, that chapter 52 of the Laws of 1913, did not create any civil liability, and that chapter 76 of the Laws of 1915, could not create such liability without the same being retroactive, [13] and that to that extent chapter 76 of the Laws of 1915, was void as being in conflict with the provisions of the Constitution of the United States; further that no taxes were laid by chapter 52 of the Laws of 1913, which could under any circumstances be the subject of a civil action; that chapter 52 of the Laws of 1913 is a criminal statute imposing no civil liability; that chapter 76 of the Laws of 1915 is void in so far as it attempts to give a civil remedy in relation to the matters and things dealt with in chapter 52 of the Session Laws of 1915, in that such legislation would change the remedy from a criminal to a civil one, deprive the defendant of the right of a trial in accordance with the rules of criminal pro-

cedure and make the defendant liable to a fine and penalty imposed by a purely criminal statute in accordance with the rules of proof and rules of procedure applicable to civil cases; that said chapter 76 of the Laws of 1915, is in that regard retroactive and void; that exception is further taken to the said conclusion of law number two on the ground and for each and all of the reasons urged in the statement of facts as the contentions of the defendant, and the same and each and all of the same are to be regarded as written herein, which exception was then and there allowed by the Court.

Whereupon the Court entered its judgment for the plaintiff over the objection of the defendant, to which ruling and order of the Court, the defendant excepted, which exception was then and there allowed by the Court.

**[Order Settling and Allowing Bill of Exceptions,
etc.]**

And now this matter coming on to be heard on the application of the defendant asking that the above and foregoing be settled and allowed as a bill of exceptions herein [14] and the Court being fully advised in the premises finds that the above and foregoing is a true, full and correct bill of exceptions; that the same contains a true and accurate record of all the proceedings had herein; that no evidence was adduced in the cause, but the cause submitted upon an agreed statement as herein set forth, which said foregoing agreed statement it is hereby certified contains all the facts stipulated to by the parties upon which the cause was submitted.

NOW, THEREFORE, it is ordered that the above and foregoing be signed, settled and allowed by the Court as a true, full and correct bill of exceptions herein containing a full, true, accurate and correct record of all the proceedings had herein, and it is further ordered that said bill of exceptions so signed, settled and allowed shall be and constitute a part of the record in this cause.

Done in open court this 27th day of December, A. D., 1915.

ROBERT W. JENNINGS,
Judge.

COBB.

Filed in the District Court, District of Alaska,
First Division. Dec. 27, 1915. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [15]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1408—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Defendant.

Judgment.

This cause came on regularly to be heard upon the agreed statement filed herein and was submitted to the Court for decision under the provisions of chapter 28 of the Alaska Code of Civil Procedure. And

the Court having heard said statement and fully considered the same, concludes as a matter of law from the facts therein stated:

I.

That the defendant is liable for the license tax laid by the Territory of Alaska in chapter 52 of the Session Laws of 1913.

II.

That the taxes so due may be recovered in a civil action under the provisions of chapter 76, Session Laws of Alaska 1915.

IT IS THEREFORE CONSIDERED BY THE COURT and so ordered and adjudged and decreed that the plaintiff, the Territory of Alaska, do have and recover of and from the defendant, Alaska Mexican Gold Mining Company, a corporation, the sum of Eight Hundred and Sixty-Two and 61/100 Dollars (\$862.61) together with costs herein to be taxed by the clerk, for all of which let execution issue. [16]

Done in open court this the 27th day of December, 1915.

ROBERT W. JENNINGS,
Judge.

Filed in the District Court, District of Alaska,
First Division. Dec. 27, 1915. J. W. Bell, Clerk.
By ———, Deputy. [17]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1408—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Defendant.

*United States Circuit Court of Appeals for the
Ninth Circuit, Holden at San Francisco.*

Case No. 1408—A.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Plaintiff in Error,

vs.

TERRITORY OF ALASKA,

Defendant in Error.

Petition for Writ or Error and Allowance Thereof.

To the Honorable ROBERT W. JENNINGS, Judge
of the District Court for the Territory of
Alaska, Division Number One:

Now comes the above-named Alaska Mexican Gold Mining Company, a corporation, the plaintiff in error herein, by its attorneys, Hellenthal & Hellenthal, and complains that in the record and proceedings had in the District Court for the Territory of Alaska, Division Number One, in the case of the Territory of Alaska, plaintiff and defendant in er-

ror, against the Alaska Mexican Gold Mining Company, defendant, and plaintiff in error, and also in the rendition of the judgment in said cause in the District Court for the Territory of Alaska, Division Number One, against the Alaska Mexican Gold Mining Company on the 27th day of December, 1915, wherein the District Court for the Territory of Alaska adjudged the defendant, the Alaska Mexican Gold Mining Company, to be indebted to the plaintiff, the Territory [18] of Alaska, in the sum of \$862.61, and wherein the plaintiff, the Territory of Alaska, was given judgment against the defendant, the Alaska Mexican Gold Mining Company, for the sum of \$862.61, and costs, taxed at \$——, manifest error hath happened to the great damage of said Alaska Mexican Gold Mining Company, as will more fully appear from the assignment of errors filed herewith.

WHEREFORE the Alaska Mexican Gold Mining Company prays for the allowance of a writ of error, and for an order fixing the amount of the bond in said cause, and for such other orders and processes as may cause the said errors to be corrected by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 28th day of December, A. D., 1915.

HELLENTHAL & HELLENTHAL,
Attorneys for Alaska Mexican Gold Mining Company.

The above petition for writ of error is allowed and the bond fixed at \$1,500.00 (\$1,500.00) dollars, to be approved by the clerk or Judge of the above-entitled

court. Dated this 28th day of December, 1915.

ROBERT W. JENNINGS,

Judge.

O. K.—COBB.

Filed in the District Court, District of Alaska,
First Division. Dec. 28, 1915. J. W. Bell, Clerk.
By —————, Deputy. [19]

*In the District Court for the Territory of Alaska,
Division Number One.*

Case No. 1408—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Defendant.

*United States Circuit Court of Appeals for the
Ninth Circuit Holden at San Francisco.*

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Plaintiff in Error,

vs.

TERRITORY OF ALASKA,

Defendant in Error.

Assignment of Errors.

Comes now the Alaska Mexican Gold Mining Company, the plaintiff in error, and assigns the following errors committed by the Court in connection

with the trial and rendition of judgment herein, the errors so assigned being the errors which the plaintiff in error intends to urge before the United States Circuit Court of Appeals for the Ninth Circuit, and are the errors relied upon for a reversal of the Judgment herein:

First Error Assigned.

That the Court erred upon the submission of the cause to it on the agreed statement of facts in not concluding that the defendant was not indebted to the plaintiff in the sum demanded or in any sum whatsoever and entering judgment in favor [20] of the defendant accordingly as it was requested to do by the defendant at the time the cause was submitted.

Second Error Assigned.

That the Court erred in adopting as its conclusion, conclusion of law number one contained in the judgment, "That the defendant is liable for the license tax laid by the Territory of Alaska in chapter 52 of the Session Laws of 1913."

Third Error Assigned.

That the Court erred in adopting as its conclusion, conclusion of law number two embodied in the judgment, which reads as follows: "That the tax so due may be recovered in a civil action under the provisions of chapter 76, Session Laws of Alaska, 1915."

Fourth Error Assigned.

That the Court erred in entering judgment for the plaintiff and against the defendant.

HELLENTHAL & HELLENTHAL,
Attorneys for Alaska Mexican Gold Mining Com-
pany.

Due service by copy admitted this 27 day of December, 1915.

J. H. COBB,
Chief Counsel for Territory of Alaska.

Filed in the District Court, District of Alaska,
First Division, Dec. 28, 1915. J. W. Bell, Clerk. By
L. E. Spray, Deputy. [21]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1408-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Defendant.

*United States Circuit Court of Appeals for the
Ninth Circuit Holden at San Francisco.*

Case No. 1408-A.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Plaintiff in Error,

vs.

TERRITORY OF ALASKA,

Defendant in Error.

Writ of Error.

United States of America,—ss.

The President of the United States of America to
the Honorable ROBERT W. JENNINGS,
Judge of the District Court for the Territory
of Alaska, Division Number One, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea, which is in
said District Court, Division Number One thereof,
before you, between the Territory of Alaska, as plain-
tiff, and the Alaska Mexican Gold Mining Company,
a corporation, as defendant, a manifest error hath
happened to the great prejudice and damage of the
said Alaska Mexican Gold Mining Company as set
forth and appears by the petition herein, [22]

We, being willing that error, if any hath hap-
pened, should be duly corrected and full and speedy
justice done to the parties aforesaid in this behalf,
do command you, if judgment be therein given, that
then under your seal distinctly and openly you send
the records and proceedings aforesaid with all things
concerning the same to the Justices of the United
States Circuit Court of Appeals for the Ninth Cir-
cuit, in the city of San Francisco, in the State of Cali-
fornia, together with this writ, so as to have the same
at said place and said circuit on or before thirty days
from the date hereof, that the record and proceedings
aforesaid being inspected the said Circuit Court of
Appeals may cause further to be done therein to cor-
rect those errors what of right, and according to the

laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 28 day of December, A. D. 1915.

Attest my hand and the seal of the District Court for the Territory of Alaska, Division Number One, at the clerk's office at Juneau on the day and year last above written.

[Seal]

J. W. BELL,
Clerk of the District Court for the Territory of
Alaska, Division No. 1.

Allowed this 28 day of December, A. D. 1915.

ROBERT W. JENNINGS,
Judge.

Service of the foregoing writ of error is admitted
this Dec. 28th, 1915.

J. H. COBB,
Chief Counsel, Ter. of Alaska.

O. K.—COBB.

Filed in the District Court, District of Alaska,
First Division, Dec. 28, 1915. J. W. Bell, Clerk.
By —————, Deputy. [23]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1408-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Defendant.

*United States Circuit Court of Appeals for the Ninth
Circuit, Holden at San Francisco.*

Case No. 1408-A.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Plaintiff in Error,

vs.

TERRITORY OF ALASKA,

Defendant in Error.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
that we, the Alaska Mexican Gold Mining Company,
a corporation, as principal, and Charles Goldstein, as
surety, are held and firmly bound unto the above-
named Territory of Alaska in the just and full sum
of Fifteen Hundred (\$1,500) Dollars, to be paid to
the said Territory of Alaska, its attorneys or assigns,
to which payment, well and truly to be made, we bind
ourselves, our heirs, executors and administrators,
jointly and severally by these presents. Sealed with

our seals and dated this 28th day of December, A. D. 1915.

WHEREAS, lately in the District Court for the Territory of Alaska, Division Number One, in an action therein pending between the Territory of Alaska, as plaintiff, and the Alaska Mexican Gold Mining Company, a corporation, as defendant, [24] a judgment was rendered against the said Alaska Mexican Gold Mining Company for the sum of \$862.61 and costs, and the said Alaska Mexican Gold Mining Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid action and the citation directed to the said Territory of Alaska, citing and admonishing it to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, within thirty days from the date of approval of this bond,

Now, the condition of the above obligation is such that if the said Alaska Mexican Gold Mining Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its said plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

ALASKA MEXICAN GOLD MINING CO.

By J. O. HELLENTHAL,

Its Attorney,

Principal.

CHARLES GOLDSTEIN,

Signed, sealed and delivered in the presence of:

B. A. ROESELLE.

A. GOLDSTEIN.

The above and foregoing Supersedeas and cost bond is hereby duly approved, not only as to form, but also as to the surety thereon, this 28 day of December, 1915.

ROBERT W. JENNINGS,
Judge of the District Court for the Territory of
Alaska, Division Number One.

O. K.—COBB.

Filed in the District Court, District of Alaska,
First Division. Dec. 28, 1915. J. W. Bell, Clerk.
By —————, Deputy. [25]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1408-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Defendant.

*United States Circuit Court of Appeals for the Ninth
Circuit, Holden at San Francisco.*

Case No. 1408-A.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Plaintiff in Error,

vs.

TERRITORY OF ALASKA,

Defendant in Error.

Citation on Writ of Error.

The President of the United States to the Territory of Alaska, the Above-named Plaintiff and Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Division Number One, where the Alaska Mexican Gold Mining Company, a corporation, is the plaintiff in error and you, the said Territory of Alaska, are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should '[26]' be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 28th day of December, A. D. 1915, and of the Independence of the United States the 139th.

ROBERT W. JENNINGS,
Judge.

Service of the foregoing citation admitted this Dec. 28th, 1915.

J. H. COBB,
Chief Counsel, Ter. of Alaska.

O. K.—COBB.

Filed in the District Court, District of Alaska,
First Division. Dec. 28, 1915. J. W. Bell, Clerk.
By —————, Deputy. [27]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1408-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA MEXICAN GOLD MINING COM-
PANY, a Corporation,

Defendant.

Praeipce [for Transcript of Record].

Kindly prepare certified copies for transmission to the United States Circuit Court of Appeals in connection with your return of the Writ of Error herein as follows: Bill of Exceptions, Judgment, Petition for Writ of Error and Order allowing the same, Assignment of Errors, Writ of Error, Bond on Writ of Error, and Citation on Writ of Error.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendant.

Filed in the District Court, District of Alaska,
First Division. Dec. 28, 1915. J. W. Bell, Clerk.
By —————, Deputy. [28]

In the District Court for the District of Alaska, Division No. 1, at Juneau, Alaska.

Certificate [of Clerk U. S. District Court to Transcript of Record].

United States of America,
District of Alaska,
Division No. 1,—ss.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 28 pages of typewritten matter, numbered from 1 to 28, both inclusive, constitute a full, true, and complete copy, and the whole thereof, prepared in accordance with the praecipe of defendant and plaintiff in error, on file in my office, and made a part hereof in Cause No. 1408—A, Territory of Alaska, Plaintiff, vs. Alaska Mexican Gold Mining Company, a Corporation, Defendant.

I further certify that said record is by virtue of the Writ of Error and Citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate amounting to twenty-five dollars (\$25.00), has been paid to me by counsel for plaintiff in error.

In witness whereof I have hereunto set my hand and the seal of the above-entitled court this 28th day of December, 1915.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy.

[Endorsed]: No. 2727. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Mexican Gold Mining Company, a Corporation, Plaintiff in Error, vs. The Territory of Alaska, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District Court of Alaska, Division No. 1.

Filed January 5, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

